REMARKS

It is applicant's understanding that the Final Rejection dated September 25, 2003 has been withdrawn. It is further applicant's understanding that the rejections raised in the outstanding Office Action are non-Final.

Claims 1-9 have been rejected under 35 USC 103(a) as being obvious over U.S. 5,451,449 to Shetty et al. in view of U.S. 6,602,585 to Graney. Applicant notes that the Examiner has not given any explanation of the rejection. Furthermore, Graney issued to the same inventor and same assignee of the present application has a filing date subsequent to the filing date of the present application. Accordingly, U.S. 6,602,585 is not a proper reference under 35 USC 103(a). It is respectfully requested that the rejection be withdrawn.

Claims 1-9 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. 5,451,449 to Shetty et al. in view of U.S. 6,602,585 to Graney. The Examiner admits that the Shetty reference does not teach a film that has been uniaxially oriented and having the claimed tensile strength, thickness, and thread width. The Examiner concludes, however, that it would have been obvious to one of ordinary skill in the art to make the uniaxially oriented multilayer film having the claimed properties since Graney teaches a shrinkable iridescent film and provides it is known to uniaxially orient a coextruded, multilayered iridescent film. The rejection is respectfully traversed.

While Shetty claims a transparent thermoplastic laminate film containing multilayers, the Examiner is correct in that Shetty does not claim that the film is uniaxially oriented, nor does Shetty claim the ultimate tensile strength as recited in claim 1, nor the ultimate tensile at break as recited in claim 2. Shetty also does not claim the subject matter set forth in claim 9, where the film is in the form of a microfilament thread having a specified width. While this is not a prior art rejection under 35 USC 103, it is believed the Examiner's application of Graney to make up for a deficiency in the primary reference of an obviousness-type double

patenting rejection is improper. The use of "obviousness" in the double patenting rejection infers a priority requirement. Graney has a filing date subsequent to the filing date of the instant application, and accordingly, the claimed invention has an effective date prior to the applied reference. The Examiner cannot properly use art to find obviousness when such art was not available to the present applicant. The Examiner is kindly requested to provide legal basis for such a rejection. Accordingly, it is believed Graney is not a proper secondary reference against the claims, even in a double patenting-type rejection, and, as such, the rejection based on obviousness-type double patenting is improper. Applicant respectfully requests that the rejection be withdrawn.

Moreover, the Examiner has not pointed out where Graney teaches the strength values set forth in the instant claims. The Examiner is reminded that a rejection based on inherency cannot be based on possibilities. The Examiner is kindly directed to the discussion of inherency at page 5 of applicants' response of January 23, 2004.

Regarding claim 9, the Examiner is ignoring all the limitations thereof and trying to fit a round peg into a square hole. The Shetty et al. reference does not remotely disclose the article which is claimed. The recitation of case law directed to apparatus is not germane to the issue.

In view of the above remarks, it is believed that claims 1-9 patentably distinguish over the art, and applicant respectfully solicits favorable action on these claims.

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Date

Respectfully submitted,

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